

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

UNITED STATES OF AMERICA §
Vs. § CRIMINAL ACTION 9:04CR49
XAVIER MONZELL SMITH §

FINDINGS OF FACT AND RECOMMENDATION ON FELONY GUILTY
PLEA BEFORE UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636(b), this matter has been referred by the District Judge for administration of the guilty plea and allocution under Rule 11 of the Federal Rules of Civil Procedure.

On the 5th day of April, 2005, this cause came before the undersigned United States Magistrate Judge for Guilty Plea and Allocution of the Defendant, Xavier Monzell Smith, on the 3-Count Indictment filed herein charging him with violations of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Sections 922(g)(1) and 924(c)(1). After conducting the proceeding in the form and manner prescribed by Fed.R.Crim.P. 11, the Court finds:

- a. That the Defendant, after consultation with counsel of record, has knowingly and voluntarily consented to the administration of the Guilty Plea and Allocution in this cause by a United States Magistrate Judge subject to a final approval and imposition of sentence by the District Judge.
- b. That the Defendant pled guilty to Count 3 of the Indictment, pursuant to a plea agreement with the Government which has been filed and disclosed in open court pursuant to Fed.R.CrimP. 11(c)(2). Count 3 of the Indictment charges the Defendant with possession of a firearm during and in relation to a drug trafficking offense, in

violation of Title 18, United States Code, Section 924(c)(1).

- c. That the Defendant is fully competent and capable of entering an informed plea, that the Defendant is aware of the nature of the charges and the consequences of the plea, and that the plea of guilty is a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of the offense.

IT IS THEREFORE the recommendation of the undersigned United States Magistrate Judge that the District Judge accept the Plea Agreement and the Guilty Plea of the Defendant, conditional upon a review of the presentence report, and that the Defendant, **XAVIER MONZELL SMITH**, be finally adjudged guilty of that offense.

The United States District Clerk shall serve a copy of this proposed Findings of Fact and Recommendation on all parties by sending a notice of electronic filing and retain the receipt of notice of electronic filing.

So **ORDERED** and **SIGNED** this **7** day of **April, 2005**.


JUDITH K. GUTHRIE
UNITED STATES MAGISTRATE JUDGE